

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

JOHN HANCOCK LIFE INSURANCE
COMPANY,

Plaintiff

v.

CIVIL ACTION
NO. 05-11614-WGY

VESTMONT LIMITED PARTNERSHIP
VESTMONT LIMITED PARTNERSHIP II
VESTMONT LIMITED PARTNERSHIP
III and VESTERRA CORPORATION
d/b/a MONTGOMERY SQUARE
PARTNERSHIP,

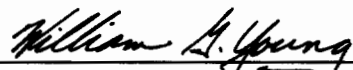
Defendants

ORDER

With respect to the parties dispute over attorneys fees and costs, the Court rules that the underlying contract's reference to "costs and expenses" includes attorneys fees and costs attendant on enforcing the contract rights. Factual issues abound, however, with respect to whether there was an express agreement to try the issue of the amount of the attorneys' fees to the Court or whether the failure to adduce evidence on the issue amounts to a waiver and any subsequent action to recover such fees is precluded on the grounds of claim splitting. As

none of these matters were brought to the attention of the Court during the course of these proceedings, and since the Court did not agree to any such procedure, the parties must now proceed by way of a separate action with new counsel (as they are the key witnesses to the purported agreement).

SO ORDERED.



William G. Young
District Judge